

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CARL BROWN,

Plaintiff,

05 Civ. 9443(PKC)(RLE)

- against -

**STIPULATION OF SETTLEMENT  
AND ORDER OF DISMISSAL**

C.O. GREG AUSTIN, et al.,

Defendants.  
-----X

WHEREAS, plaintiff, Carl Brown, filed a Complaint dated December 2006, alleging that defendants Correction Officers Greg M. Austin, Clifford K. Gunsett, Daniel Huttel, Andrew J. Shambo, Steven Purcell and Sergeant David J. Matyas, had violated plaintiff's rights during plaintiff's incarceration in the New York State Correctional Services system; and

WHEREAS, defendants moved to dismiss the complaint, in part, pursuant to Fed. R. Civ. Proc. 12(b)(6) and denied all allegations that their conduct violated plaintiff's constitutional or other rights; and

WHEREAS, by order dated October 3, 2007, defendants' motion was granted in part and denied in part; and

WHEREAS, defendants subsequently moved for partial summary judgment, pursuant to Fed. R. Civ. Proc. 56; and

WHEREAS, by order dated March 3, 2009, defendants' motion was granted in part and denied in part; and

*Mailed 6/23/10*

WHEREAS, the parties are interested in resolving the remaining issues alleged in the Complaint in the above-captioned action ("Action"), and have negotiated in good faith for that purpose; and

WHEREAS, none of the parties to the Action is an infant or incompetent person; and

WHEREAS the parties to the Action wish to discontinue this litigation without the need for trial and without admitting any wrongdoing on the part of defendants; and

WHEREAS plaintiff represents and warrants that, other than this Action, he has no action or proceeding pending in any court, state or federal, arising out of or relating to the subject matter of this lawsuit.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the parties and/or their respective counsel as follows:

1. The parties hereby agree that the Action is dismissed and discontinued with prejudice.
2. Defendants shall pay to plaintiff the sum of Nine Thousand Dollars (\$9,000.00) in full satisfaction of any and all claims for relief in this Action. Plaintiff's attorney Davis Polk & Wardwell, LLP is not seeking any attorneys fees, costs or disbursements.
3. Payment shall be made by check, in the amount of Nine Thousand Dollars (\$9,000.00), which shall be made payable to plaintiff and delivered to the correctional facility in which plaintiff is incarcerated, for deposit in his inmate facility/departmental account.
4. In consideration of the payment of the sum recited in paragraph #2 above, the plaintiff, Carl Brown, hereby releases and discharges each of the defendants and any and all current or former employees or agents of New York State or the New York State Department of Correctional Services, in their individual and official capacities, and their heirs, executors, administrators and assigns, and the State of New York and its agencies, including, without

limitation, the New York State Department of Correctional Services, from any and all claims, liabilities and causes of action asserted in, or which could have been asserted in, this Action, or which relate to or arise out of this Action or any of the incidents alleged in the complaint herein.

5. Nothing in this Stipulation of Settlement shall be construed as an admission or acknowledgment of liability whatsoever by any of the defendants or the New York State Department of Correctional Services regarding any of the allegations made by the plaintiff in his Complaint.

6. Payment of the amount recited in paragraph #2 above is subject to the approval of all appropriate New York State officials in accordance with the provisions for indemnification under Section 17 of the New York Public Officers Law. Plaintiff and plaintiff's counsel agree to execute and deliver to counsel for defendants all necessary or appropriate vouchers and other documents requested with respect to such payment. The provisions of Chapter 62 of the Laws of 2001 (relating to crime victims, funds of convicted persons and the Crime Victims Board) may be applicable to payments by defendants hereunder.

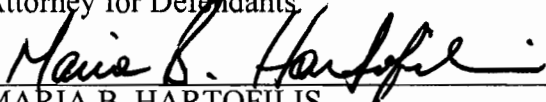
7. Subject to the provisions of the foregoing paragraphs, in the event payment of the amount recited in paragraph #2 above is not made within one hundred and twenty (120) days after the receipt by defendants' counsel from plaintiff of a copy of the fully executed So-ordered Stipulation of Settlement as entered by the Court, interest shall accrue on the outstanding principal balance at the rate set forth in 28 U.S.C. § 1961 beginning on the one hundred and twenty-first day after receipt by defendants' counsel of a copy of the fully executed So-ordered Stipulation of Settlement.

8. This Stipulation of Settlement and any Order entered thereon, shall have no precedential value or effect whatsoever and shall not be admissible in any other action or proceeding as evidence or for any other purpose, except in an action or proceeding to enforce this Stipulation of Settlement.

9. This Stipulation of Settlement and Order of Dismissal embodies the entire agreement of the parties in this matter and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceedings, shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

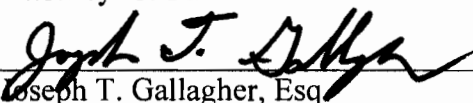
Dated: New York, New York  
June 21, 2010

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Attorney for Defendants

  
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Dated: New York, New York  
June 21, 2010

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Attorney for Plaintiff

  
\_\_\_\_\_  
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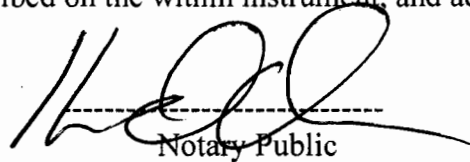
Dated: Clinton Correctional Facility

Dannemora, New York  
June 16, 2010

By: Carl Brown  
CARL BROWN

**ACKNOWLEDGMENT**

On the 16 day of June, 2010, before me  
came Carl Brown, known to me or proved to me on the basis of satisfactory  
evidence to be the person whose name is subscribed on the within instrument, and acknowledged  
to me that he executed the same.

  
Notary Public

Harry D. Durgan  
Notary Public, State of New York  
No. 01DUG008379  
Qualified in Clinton County  
Commission Expires

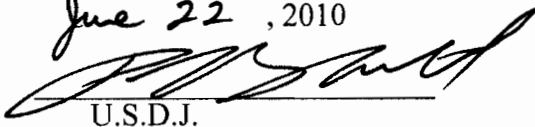
*Any open motions  
are terminated. The  
case is closed. The  
Court appreciates the efforts of all counsel.*

*6/22/14*

SO ORDERED:

Dated: New York, New York

June 22, 2010

  
U.S.D.J.